



LEGAL

ASPECTS OF

TRANSEXUALISM

AND INFORMATION ON ADMINISTRATIVE PROCEDURES

Erickson

Educational

Foundation

A NON-PROFIT ORGANIZATION



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PUBLIC AWARENESS AND THE LAW

Proper medical care and a helpful or at least dispassionate attitude on the part of his fellow citizens toward the transexual are the prime factors in his successful adjustment to a new life. When you consider that not only the general public but even the majority of those physicians and psychiatrists who do not specialize in treating the transexual are largely ignorant of his problems, it will come as no surprise that there are few legal measures designed specifically to assist the transexual. Fortunately, however, until this gap is filled and more precedents established, he can avail himself of various administrative and judicial procedures which ensure the civil rights and comforts of all citizens. Consultation with experienced and sympathetic legal counsel can help him to adapt these measures to his own special case, so that he can secure for himself the maximum protection the present laws afford.

Although it is impossible to legislate acceptance of any minority, religious or otherwise, the law can provide new opportunities for members of minority groups to expand their lives into areas from which they were once excluded. This enables their fellow citizens for the first time to have the chance to know them as individuals and to discover in them their special talents as well as the common humanity we all share. Through this direct social experience, prejudices are overturned.

In 1953, when Christine Jorgensen's story received such wide and sensational coverage, the public was uninformed about transexualism. The situation has altered dramatically since then, and ten years from now may be expected to demonstrate even more progress.

Many of the following suggestions for the uses of administrative procedures may be applied by you without professional assistance. But where more special legal redress is sought, we strongly advise you to consult legal counsel in adapting the uses of the law to your own needs. In this way a painful and perhaps unsuccessful process of trial and error may be avoided and your privacy ensured.

Hopefully these general guidelines will assist you. But please take note that the laws and administrative processes of the various states and counties still vary widely, and the application of them by different individuals within each area of jurisdiction may differ as well, i.e., various officials, besides having their own "hang-ups," inter-

pret the law differently. In this new field, new instances of legal relief of which a layman may not be aware may occur at any time, thus rendering some of our suggestions out of date.

An understanding and sympathetic attorney is essential, even though he may be inexperienced in this new situation. In that event he may consult with any of the following members of the Legal Advisory Board of the Erickson Educational Foundation, who have expressed their willingness to cooperate in this regard. These men **must** be paid by those who consult them.

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CROSS-DRESSING

Tests have confirmed that you have an irrevocable transsexual condition. Your physician begins a course of hormone therapy, the first step in treatment that will culminate in sex reassignment surgery. Ideally, he will later advise you to live and work in your chosen role for at least six months and preferably for two years prior to surgery. This, of course, entails dressing appropriately. To do so without running afoul of the law, it is important to secure the safeguard of proper identification and/or authorization. It would also be well to keep in mind the advice of Dr. Jon Meyer of Johns Hopkins Hospital, that "the most obvious guideline is that if you are going to cross-dress, don't be obvious about it."

You may obtain a letter from your physician attesting to the fact that he is treating you for a transsexual condition and/or the Erickson Educational Foundation in Baton Rouge¹ will issue an identification

1. If you live in San Francisco the Center for Special Problems of the Police Department will issue an ID card allowing you to cross-dress.

card to this effect. On presentation of a doctor's letter, many county Departments of Medical Services (Mental Health Division) and state Departments of Health (Bureau of Special Health Services) supply a letter on official letterhead, signed by the department director. A composite of several such letters we have seen might read as follows:

To Whom It May Concern:

This will attest to the fact that John Smith who resides at Address, City, State, is under treatment for a neuro-endocrinological condition known as transsexualism. He is authorized to live and dress as a woman, using the name of Jane Smith, during the pre-operative phase of his treatment. Mr./Miss Smith is not criminally inclined, and his cross-dressing is not intended to perpetrate a fraud or cause harm to any individual.

Unfortunately an official letter is not always obtained and neither the letter nor an EEF ID card will render you immune to prosecution in every county of all the states. Not only do state laws concerning cross-dressing vary, but so do the local ordinances which are more frequently invoked in instances of prosecution. Still, an identification document or card has proved useful in many localities.

According to a recent survey of many states, there are state laws in Arizona, California, Colorado, Idaho, Nevada, Oklahoma, Oregon, Texas, Utah and Washington, under which an individual may be arraigned for cross-dressing. However, the situation is changing toward greater liberality. For instance, until recently New York state had such a law, which is now no longer in effect. We also note as an encouraging example of inconsistency, that although prosecution for cross-dressing is possible under state law in Oregon, at least one Oregon county that we know of will issue an official letter authorizing a pre-operative transsexual to cross-dress. It is to be hoped that the state will eventually follow suit.

The eminent criminologist, Dr. William P. Brown, Professor of Criminal Justice at the State University of New York at Albany, stated: "Nobody can officially state that the letter from a doctor or an identity card can be legal grounds for violating the law. However, that kind of statement could certainly be considered by many courts as indicating a noncriminal intent."

There are instances where individuals have gone to Police Head-

quarters directly to explain their condition and have been given tacit permission to cross-dress. In one case, the mayor of a large metropolitan suburb conceded the necessity for a transexual to cross-dress and gave his approval.

Aside from legal factors, there are other considerations to take into account. A pre-operative transexual has made it a point for several years to visit provincial communities, advise the authorities of his visit and intention to cross-dress as well as his willingness to address civic groups or be interviewed on radio or TV. In many cases he has met with success. However, on one occasion he had received official permission to cross-dress and was interviewed on radio and addressed several service clubs. Following an interview, he was pistol-whipped by a local resident and the sheriff suggested that he leave town for his own safety as several people had banded together to kill him. So, unless you have made a deliberate decision to crusade for the cause of transexualism, consciously accepting all the attendant risks, you would be well advised not to court publicity.

During the last few years there have been many changes in clothing styles. For example, the unisex mode, where male and female apparel is identical and interchangeable, makes the cross-dressing situation even more ambiguous. Ultimately, the unisex mode, and similar style changes, may have a beneficial effect in encouraging freedom of choice in one's manner of dress.

Social pressures frequently motivate the "pre-op" to move to a cosmopolitan area such as San Francisco or New York City. Nevertheless, various legal identity situations still have to be handled.

IDENTITY AND IDENTIFICATION

When the probability of sex-reassignment surgery is imminent, a gradual changing of identification may begin. You may not know that under the common law you have a legal right to call yourself by any first name you wish, provided there is no intent to defraud or of prejudice to others. If your name applies for either sex (e.g., Billie, Leslie), it may be advisable to continue to use it. Otherwise, it would be expedient to select a name with the same first initial.

You may use your new name when applying for a library card, establishing a bank account, and applying for credit cards. Many such procedures may be handled through the mails. You may decide to open

a new bank account without closing out the account under your original name, and manage your transactions by mail. Then at a later date you may write a check to your new account from the old one, withdrawing all funds and thus closing the account.

Legal Change of Name²

If you should decide that you want the extra security and convenience of a legal change of name (first and/or last), this can be handled successfully by petition of your attorney to the Probate Court. Your physician may write to the attorney, stating that transexual surgery has been performed and recommending a legal change of name to accurately reflect your changed anatomical status, and as vital to your health and well-being. This is the essential document in your attorney's presentation to the court. If the court then determines that there is no evidence or intent of fraud or prejudice to others, your petition will be granted. In some states the legal change is possible before surgery and for little or no reason upon petition to the court.

Birth Certificates

If you wish to have the name and sex changed on your birth certificate, you or your attorney send a doctor's letter requesting this change for the reasons given above, and a notarized copy of the change of name certificate, either to the State Board of Health, which handles the rest of the process, or directly to the Registrar of Vital Statistics of the state in which you were born.

A few states, such as New York, which grant changes of name and sex designation, follow the practice of amending the original birth certificate. That is, the certificate carries both the original name and sex and the new name and sex. This is obviously not an entirely satisfactory solution so far as your privacy is concerned. But in some cases this procedure has been circumvented, on request of a lawyer, so that the state office retains for its records the certificate so amended, and issues to the transexual a certificate bearing the new name and sex alone, with only a code number added to indicate that a previous certificate exists.

2. Until such time as the common law right to change one's name may be abrogated by statute, the courts should encourage rather than discourage the filing of petitions for change of name to the end that such changes may be a matter of public record.

The state of Illinois now issues a form designed specifically for transexuals requesting a new birth certificate. After making a positive determination on the request, it seals the original certificate, the information on which is then never divulged; and then issues an entirely new certificate, with no amendments and no code number.

Some other states which have issued new certificates are: Alabama, California, Colorado, Hawaii, Iowa, Louisiana, Maryland, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, Pennsylvania, Virginia, Tennessee, Texas and Wisconsin.

Before applying for a new birth certificate, you should be able to establish that you are physically not able to "function as a male," i.e. inseminate a woman because you have no testicles, or you are not able to "function as a female," bear children, because you have no uterus or ovaries. This, in conjunction with your hormone therapy and appearance, establishes your physical gender identification.

Social Security Card

When you are ready to work under the new name and sex status, the procedure recommended by the Social Security Administration should be carefully followed so that you will incur no loss of the benefits to which you are entitled. The Administration has advised us that a legal opinion will be required in the case of any individual applying for widow's or other benefits if his sex is other than that on his original Social Security Card, even though the name on the records has been changed.

The first step is to obtain and fill out a green card, available at all local offices of the Administration, with the heading "Request for Change in the Social Security Records." You may request the change of name yourself prior to surgery. If you wish to change name and sex after your operation, submit a letter from your doctor stating that you are now female or male.

You may prefer to submit the green card to your attorney who will then prepare an affidavit, to be signed by your physician, which will state that he is preparing you for surgery, or that surgery has been performed and is irreversible, and that, in either case, he recommends a change in your records in the interest of your health and well-being. The attorney will then submit the card and affidavit to the Social Security Administration. Legal assistance may provide a possible safeguard against delay or withholding of benefits. Should the card alone be

submitted, with only your own statement requesting the change for personal and medical reasons, there is a definite risk that benefits may be denied until a legal opinion is available.

Driver's License

During the pre-operative period, some individuals give up the use of their cars. Others do not, taking the risk of driving under the original license. Others apply for a new license, taking a test under their new name and sex designation or omitting the latter.

A recent opinion on Departmental policy governing fraudulent drivers' licenses rendered by the California Department of Motor Vehicles, San Francisco Division of Drivers Licenses, states:

"On cases in which an individual gives false information as to the sexual status, one must ask the questions: Did the individual have ill motives with intent to defraud? To what degree did this misinformation or falsity affect the general reliability of a government-issued document, such as a driver's license?

"With the limited cases of transsexuals or transvestites, which have been brought to the Department's attention, the matter of sexual status alone has been usually resolved with a medical letter, which may describe the individual as a female for all intents and purposes, despite being organically a male, or the reverse may be true, namely a female being a male."

While this statement applies officially only to the State of California, it may become a guideline in dealing with the situation in other states. It is wise to obtain policy decisions by going directly to the head of the central office of an agency, such as the State Department of Motor Vehicles, rather than to deal with a branch representative.

In Pennsylvania, in one case known to us, the Director of the Bureau of Special Health Services of the State Department of Health, upon receipt of a letter from the physician of a pre-operative transsexual, himself contacted the Bureau of Motor Vehicles requesting that the license be changed from the full name to one using only first name initials. This would seem a good procedure to follow, securing whatever additional help a representative of the Department of Health can offer at the same time as requesting a statement of permission to cross-dress.

If you plan to move to another state following your sex reassignment operation, it may be simpler to wait until you are settled in your new residence and apply for a driver's license under your new name.

Passport

If you plan to travel to a foreign country for the sex reassignment operation, your passport photograph must conform with the sex designated on your birth certificate. However, some clothing and hair styles are appropriate for either sex. Also, some parents name girls John, Jr., etc. and name boys Nora, Leslie, Beverly, etc., so regardless of your name, if your personal appearance is convincing, there should be no real problems since the passport does not specify sex. Your dress while traveling should also accord with the identity implied by the name and photograph on your passport. To do otherwise involves the risk of adverse remarks from officials, and perhaps legal proceedings.

Some transsexuals who have had surgery performed abroad applied to the United States Consulate in the country where the operation took place, presenting the surgeon's letter attesting to this fact and a new photograph, and were then issued a new passport. The alternative would be to return to the United States dressed in conformity with the identity indicated on the original passport.

If surgery is performed in the United States, the Passport Office of the Department of State in Washington now requires that you submit proof of legal change of name and sex, in the form of a court order or an amended or recertified birth certificate, before they will accept a new photograph and issue a new passport.

No passport is required for Mexico.

Occupational Licenses

Licensed members of the various trades, such as electricians, beauticians, dieticians, may apply directly to the state office concerned to obtain a new work license. This would apply also to members of the professions which require licensing, such as teachers, engineers and psychologists. However, this might be handled most expeditiously through the services of an attorney.

Education Records

A number of universities have changed the sex designation of students, as well as the transcripts of former students, following proof of sex reassignment surgery. The assistance of an attorney or social worker is helpful in maintaining privacy during the preliminary inquiry period as well as the procedure itself. (See Chapter 28 of *Transsexualism and Sex Reassignments*, for detailed account.)

A pre-med student we know transferred from an all woman college to a New York university as a male, although unoperated, on his own by speaking to the Director of Admissions. He also obtained a new driver's license in a similar manner.

Other Records

Welfare recipients may arrange to have their name changed on their records, checks and identification cards by having their doctor provide written confirmation of the reasons for change to their social worker.

Where insurance policies, property deeds and investment securities are concerned, the records should be adjusted through an attorney if you cannot arrange it yourself.

Bequests

In making a bequest to a transexual, the testator should indicate the devisee clearly and by name. If a parent's will reads "to my son John," where John Smith is now Jane, the inheritance would not be impeded. However, if a will reads "to my youngest son," or "to all my nephews," with no name given, the determination may go against Jane Smith. The safest construction would be: "to my daughter Jane Smith, formerly John Smith."

Where a marriage has been legalized, a transexual would specify bequests to children, wife or husband in the usual way. Legacies to a former mate should be so described. For example, Jane Smith would say "to my former wife when living as John Smith, Gladys Smith (Jones)."

Income Taxes

When filing tax forms for the first time in the new gender, indicate the change as follows: Jane Smith (formerly John Smith). After marriage, joint forms may be filed or exemption for dependents obtained in the usual way as indicated on the tax instruction sheets.

OTHER MATTERS OF CONCERN

Sex and Marriage

Where there has been a marriage, still undissolved, legal assis-

tance is imperative. Ideally, a divorce should have been obtained before sex reassignment surgery. Where children are involved, it is essential to consult a divorce lawyer prior to surgery.

In most states it is presumed that a transexual who engages in normal sexual relations with his or her mate is not violating the law and will not be liable to legal harrassment. In Minnesota, for example, sodomy is defined as limited to specific orifices (Minnesota Statute 609.293 (1) (1967)).

A transexual, as any citizen, is liable under the law for fornication and adultery.

Selective Service

A man who is contemplating or who has undergone sex reassignment surgery should secure from his physician a letter to his draft board attesting to this fact. This will be accepted by any branch of the armed services as a valid basis for exemption from service. Depending on the policy of his particular draft board, however, he may be required to report for a physical examination. If called more than once, he may wish to object or get a bit of help from EEF. A transexual who is already in the service will find it advisable to complete his required time, if possible, in order not to receive a prejudiced discharge, and so that he may qualify in full for the veteran's benefits to which he is entitled.

Recently, a male-to-female transexual who had served in the army before surgery was informed by the Executive Officer of the Women's Army Corps that a change of sex constitutes a medical disqualification for induction, enlistment and appointment. It may be reasonably assumed that this regulation would apply to the other women's services as well.

Health Insurance Benefits

Subscribers to Blue Cross are covered for sex reassignment surgery, with the following stipulations: 1. many contracts require an 11-month waiting period to qualify for treatment benefits for a pre-existing condition; 2. the pre-operative work-up must be performed on an out-patient basis; 3. coverage for hospitalization does not include the period of convalescence.

Some other policies also allow some benefits. Write to the home

office to be sure. Also V.A. hospitals will frequently help with post-operative problems.

Employment and Job Training

The Civil Rights Act of 1946 includes the following statement: "Provides for enforcement of a federal program against discrimination in employment based on race, color, religion, sex or national origin. Complaints are received, investigated and conciliated by the Equal Employment Opportunity Commission (EEOC). An aggrieved party may file a charge. Individuals knowing of discriminatory practices by an employer, union, employment agency, apprenticeship or training program also may provide the EEOC such information and request that a charge be filed by the EEOC. Charge forms may be requested from: EEOC, 1800 G Street N.W., Washington, D.C. 20506."

Although the Act does not so state, we know of two cases, one in Georgia and another in California, where the complainant was informed that a charge of discriminatory employment practices must be made within ninety days after the incident occurs. To be sure of redress, it is advisable to file a charge within this time limit. This provision would apply to transsexuals who are seeking employment and to those whose employment is terminated following sex reassignment surgery, where the individual's work was previously considered satisfactory.

The federal government makes grants to state vocational rehabilitation agencies "to help them to serve persons with a physical or mental disability who need help in obtaining and holding an appropriate job, and is based on (1) the presence of a physical or mental disability; (2) a substantial handicap to employment; (3) a reasonable expectation that on completion of services, the disabled person can be engaged in a gainful occupation.

"Services include evaluation of rehabilitation potential, counseling and guidance, personal and vocational adjustment, training, maintenance, physical restoration, placement, follow-up and other services."

Most states interpret these provisions as applying to the transsexual. To qualify for aid, ask your physician to send a letter to the State Department of Vocational Rehabilitation.

"Physical restoration" will generally include a course in grooming for the male-to-female transsexual and, where the policy is generous

and adequate funds exist, may cover electrolysis and plastic surgery, although the present probability is that they will not.

Where assistance in obtaining employment is provided by a state agency, we are aware of cases in Maryland and Georgia where only the new name is used in contacts with prospective employers. In California, should the employer inquire of the agency whether or not the individual is a transsexual, the agency answers in the negative. This of course is preferable to the equivocal answer that they are not allowed to give out such information. It may fairly be assumed that such sensitive handling of the transsexual's interests will occur at any state agency where intelligent help is available.

Recommended Reading

The most recent definitive volume on transsexualism is *Transsexualism and Sex Reassignment* (Baltimore: Johns Hopkins Press, 1969), edited by Richard Green and John Money. The following two chapters, although well-stated, may be outdated in many respects because, fortunately, the legal picture is in constant flux:

Robert V. Sherwin, "Legal Aspects of Male Transsexualism," (Chapter 28)

John Holloway, "Transsexuals and Their Legal Sex" (Chapter 29)

We would also recommend, with the same proviso, the following articles:

John P. Holloway, "Transsexuals—Their Legal Sex," *University of Colorado Law Review*, 40:283-95.

Douglas Smith, Comment, "Transsexualism, Sex Reassignment Surgery, and the Law," 56 *Cornell Law Review*, No. 6 (July, 1971). Copies will be available from the Business Manager of the *Review* in early July.

R. Joel Tierney and Timothy M. O'Brien, "You're a Good Man Charlotte Brown," *Hennepin Lawyer*, 1968.

